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 FREDERICK SCOTT SALYER, individually and as  
 Trustee for the SCOTT SALYER REVOCABLE  
 TRUST, and SKPM CORP.

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN JOSE DIVISION

BANK OF MONTREAL, as Administrative  
 Agent,

Plaintiff,

v.

SK FOODS, LLC,

Defendant.

Case No. 11-CV-80133 MISC – EJD (HRL)

**EXHIBIT F TO REQUEST FOR  
 JUDICIAL NOTICE IN SUPPORT OF  
 RESPONDENTS' SUPPLEMENTAL  
 BRIEF REGARDING RELATED  
 ACTIONS AND STAY OF  
 PROCEEDINGS FILED ON  
 SEPTEMBER 2, 2011**

v.

SKPM CORP., FREDERICK SCOTT  
 SALYER, as Trustee for the Scott Salyer  
 Revocable Trust, FREDERICK SCOTT  
 SALYER, in his Individual Capacity,

Respondents.

Date: September 23, 2011  
 Time: 9:00 a.m.  
 Judge: Honorable Edward J. Davila

# RJN EXHIBIT F

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

IN RE:

SK FOODS, L.P.

Debtor.

BRADLEY SHARP,

Plaintiff,

v.

SSC FARMS 1, LLC, et al.,

Defendants.

CIV. NO. S-10-1492 LKK

IN RE:

SK FOODS, L.P.

Debtor.

CIV. NO. S-10-1493 LKK

IN RE:

SK FOODS, L.P.

Debtor.

BRADLEY SHARP,

Plaintiff,

v.

CSSS, L.P., et al.,

Defendants.

CIV. NO. S-10-1496 LKK

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1 IN RE:

2 SK FOODS, L.P.

3 Debtor.

4 BRADLEY SHARP,

CIV. NO. S-10-1497 LKK

5 Plaintiff,

6 v.

7 FRED SALYER IRREVOCABLE  
8 TRUST, et al.,

9 Defendants.

10 IN RE:

11 SK FOODS, L.P.

12 Debtor.

13 BRADLEY SHARP,

CIV. NO. S-10-1498 LKK

14 Plaintiff,

15 v.

16 SKF AVIATION, LLC., et al.,

17 Defendants.

18 IN RE:

19 SK FOODS, L.P.

20 Debtor.

21 BRADLEY SHARP,

CIV. NO. S-10-1499 LKK

22 Plaintiff,

23 v.

24 SCOTT SALYER, et al.,

25 Defendants.

26

1 IN RE:

2 SK FOODS, L.P.

3 Debtor.

4 BRADLEY SHARP,

CIV. NO. S-10-1500 LKK

5 Plaintiff,

6 v.

O R D E R

7 SCOTT SALYER, et al.,

8 Defendants.

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9  
10 Before the court is a motion for rehearing on this court's  
11 December 10, 2010 order reversing the denial of a stay of  
12 proceedings before the Bankruptcy Court, brought by the Bankruptcy  
13 Trustee ("Trustee"). The court resolves the ambiguity in its prior  
14 order below.

15 **I. BACKGROUND**

16 On December 10, 2010, the court reversed a decision of the  
17 bankruptcy court denying a motion to stay adversarial proceedings.<sup>1</sup>  
18 As to remedy, the court ordered "a stay of all further bankruptcy  
19 proceedings where Appellants make a credible showing that discovery  
20 from or testimony of Scott Salyer or his criminal counsel is  
21 relevant to the proceedings. The court wishes to be clear, the  
22 orders heretofore issued on a preliminary basis are unaffected by  
23 this order." Order at 23. The court did not indicate what issues,  
24 if any, were to be remanded to the Bankruptcy Court.

25  
26 <sup>1</sup> The court incorporates its December 10, 2010 order.

1 Initially, the court set this motion to be heard on January  
2 31, 2011. On January 25, 2011, however, the Trustee and Appellants  
3 filed a stipulation to continue the hearing to a date no later than  
4 March 31, 2011 so that the parties could engage in mediation. On  
5 January 27, 2011, the court continued the hearing to April 11,  
6 2011. On March 28, 2011, Appellants filed a supplemental objection  
7 to the Trustee's motion. On April 4, 2011, the Trustee filed a  
8 reply brief and the unsecured creditors joined the Trustee's  
9 motion.<sup>2</sup> The motion was heard on April 11, 2011.

## 10 II. ANALYSIS

11 The Trustee has moved for a rehearing on three issues, all  
12 of which concern interpretation of the court's order on remedy.  
13 Specifically, he requests clarification as to whether the  
14 December 10, 2010 order constitutes an entry of a stay in the  
15 bankruptcy proceedings. He further requests that this court  
16 establish a procedure and time frame for the parties to submit  
17 evidence in support of and in opposition to the specific stays.  
18 Additionally, he argues that the court should amend the standard  
19 set forth in the prior order to require a stay where testimony  
20 of Scott Salyer ("Salyer") or his criminal counsel is necessary,  
21 rather than relevant, to the proceedings.<sup>3</sup>

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22  
23 <sup>2</sup> The committee of unsecured creditors requests permission to  
24 file a brief as unofficial amicus curiae and for permission to  
appear for oral argument. The court grants this request.

25 <sup>3</sup> The Trustee has also argued, in the alternative, that if the  
26 December 10, 2010 order was to operate as a stay, that it should  
only apply to the adversary proceedings where Salyer is a party.

1       The court acknowledges that its prior order was ambiguous  
2 as to the remedy it issued. Accordingly, the court clarifies<sup>4</sup>  
3 the remedy as follows: The court found that the due process  
4 rights of Appellants may be infringed if they cannot adequately  
5 defend themselves in the adversary proceedings without discovery  
6 from or testimony of Salyer, who cannot be compelled to testify  
7 under the Fifth Amendment, or his criminal counsel, who cannot  
8 be compelled to violate the attorney-client privilege.  
9 Nonetheless, the court recognizes that it is possible for the  
10 adversary proceedings to continue without offending these  
11 rights. Thus, the court is remanding the case to the Bankruptcy  
12 Court to decide, in the first instance, whether discovery from  
13 or testimony of Salyer or his criminal counsel is reasonably  
14 necessary<sup>5</sup> to dispose of a particular matter before the  
15 Bankruptcy Court in the adversary proceedings. A matter is  
16 reasonably necessary if Appellants cannot adequately defend  
17 themselves in an adversary proceeding without evidence from  
18 Salyer or his criminal counsel. The Bankruptcy Court's decisions  
19 on these matters may be directly appealed to this court on the

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20  
21       <sup>4</sup> Appellants challenge this court's jurisdiction to clarify  
22 its prior order. Under Fed. R. Civ. P. 60(a), "the court may  
23 correct . . . a mistake arising from oversight or omission whenever  
one is found in a judgment, order, or other part of the record."  
Under this rule, the court may amend its prior order to better  
reflect its understanding of the issues and appropriate remedy.

24       <sup>5</sup> Upon further reflection, the court finds that the relevance  
25 standard it previously ordered is too broad. Given the significant  
26 overlap between testimony in the adversary proceedings and the  
criminal proceedings, discovery from or testimony of Salyer or his  
criminal counsel would almost necessarily be relevant.

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1 same grounds that the court had jurisdiction to hear the appeal  
2 of the first order denying a stay of proceedings.

3 Further, Appellants shall file their initial motions to  
4 stay before the Bankruptcy Court within fourteen (14) days of  
5 the issuance of this order.<sup>6</sup> These motions must be set for  
6 hearing as early as practicable under the Bankruptcy Court's  
7 local rules and procedures. The Bankruptcy Court shall issue  
8 written orders explaining the basis for its decisions to stay or  
9 not to stay the proceedings. Additionally, the court recognizes  
10 that an adversary proceeding may not be subject to a stay at  
11 this time, but may, through the course of litigation, require a  
12 stay under the standard set forth above. In this situation,  
13 Appellants shall file a motion to stay proceedings within  
14 fourteen (14) days of their discovery of new evidence or  
15 circumstances, which they contend reasonably requires evidence  
16 from Salyer or his criminal counsel to adequately defend  
17 themselves. This motion must also be set for hearing as early as  
18 practicable. In addition to the burden set forth above,  
19 Appellants must also demonstrate why the new facts or  
20 circumstances that are claimed to exist were not shown at the  
21 time of the initial motion and were only reasonably discovered  
22 within fourteen (14) days of the filing of the motion.  
23 Appellants may not sit on their rights. Failure to bring a

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24  
25 <sup>6</sup> The court assumes that Appellants intend to stay all  
26 adversary proceedings due to their representations at oral  
argument. The court is in no way requiring the Appellants to seek  
such stays.

1 timely motion to stay will result in denial of the motion.

2       Moreover, in his reply, the Trustee attempts to introduce  
3 new evidence in support of his argument that the court amend its  
4 prior order. Specifically, the court concluded that the  
5 Bankruptcy Court's finding that the preliminary injunction will  
6 not protect the Trustee and creditors was in clear error because  
7 the Bankruptcy Court presented no explanation as to why the  
8 preliminary injunction was insufficient to protect those  
9 interests. The Trustee now attempts to seek this court's  
10 consideration of recent events to suggest that the preliminary  
11 injunction may actually be insufficient. This evidence must  
12 first be brought before the Bankruptcy Court in a motion to  
13 amend or lift a stay. If the Trustee decides to bring such a  
14 motion, the losing party may appeal the Bankruptcy Court's order  
15 on the motion to this court, as is customary in this case. At  
16 this time, however, it is not appropriate for the court to  
17 consider this new evidence.<sup>7</sup>

18       IT IS SO ORDERED.

19       DATED: April 13, 2011.

20   
21 LAWRENCE K. KARLTON  
22 SENIOR JUDGE  
23 UNITED STATES DISTRICT COURT

24       <sup>7</sup> The court notes that in its prior order affirming the  
25 Bankruptcy Court's preliminary injunction, the court decided an  
26 issue that was not previously raised before the Bankruptcy Court:  
namely, whether counsel for the non-debtor entity-Appellants could  
recover fees. The court only did so pursuant to stipulation of the  
parties and in light of the unique relationship between the  
Bankruptcy and District Courts. No such stipulation exists here  
and, thus, the court declines to decide this question in the  
instant motion.